



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No.8 of 2017
in
O.P.Nos. 28 & 29 of 2016

Dated: 29-11-2017

Present
Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

1. Southern Power Distribution Company of Andhra Pradesh Ltd.
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.
... Applicants/Petitioners

A N D

1. M/s. Lanco Kondapalli Power Pvt. Ltd.
2. M/s. Spectrum Power Generation Ltd.
... Respondents/Respondents

The Interlocutory Application has come up for hearing finally on 28-10-2017 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioners, Sri Challa Gunaranjan & Sri K. Gopal Choudary representing M/s. Lanco Kondapalli Power Pvt. Ltd., M/s. Ch. Pushyam Kiran and Sri M. Naga Deepak, learned counsel representing M/s. Spectrum Power Generation Ltd., Sri M. Venugopala Rao, Sr. Journalist & Convenor, Centre for Power Studies, Dr. S. Chandra Mouli representing APSEB Engineers Association and Sri S. Prathap representing APSEB Assistant Engineers' Association, learned objectors. After carefully considering the material available on record and after hearing the arguments of the learned Standing Counsel for the applicants/petitioners, learned counsel for the respondents and the learned objectors, the Commission passed the following:

ORDER

A petition under sections 62 (4) and 86 (1) (b) of the Electricity Act, 2003 read with Regulation 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for grant of approval for procurement of power from 1st and 2nd respondents and M/s. Godavari Gas Power Plant owned by the petitioners during 2017-18 and other appropriate orders.

2. The petitioners stated that the erstwhile Andhra Pradesh State Electricity Board entered into a Power Purchase Agreement dated 31-03-1997 with the 1st respondent for fifteen years from the Commercial Operation Date expiring on 01-01-2016. Even after the bifurcation of the State of Andhra Pradesh, the four distribution companies availed the power from the 1st respondent and after the expiry of the Power Purchase Agreement, the petitioners proposed to extend the Power Purchase Agreement with the 1st respondent located in the State of Andhra Pradesh for another ten years without exercising the option of buying out the project. The petitioners continued to purchase power from the 1st respondent upto 07-04-2017 and there were mutual negotiations between the 1st respondent and the petitioners agreeing for fixed cost tariff at Rs.180 crores per year and other modified terms, subject to the approval of the State Electricity Regulatory Commission. The Government of Andhra Pradesh by a letter dated 26-04-2017 permitted the petitioners to approach the Commission for renewal of the Power Purchase Agreement and the petitioners submitted a letter dated 03-05-2017 to approve procurement of power from the 1st respondent. It was not considered in the Retail Supply Tariff Order of 2017-18. The draft Power Purchase Agreement was also submitted, which is pending with the Commission. M/s. GAIL (India) Limited agreed to renew natural gas supply to the 1st respondent and it issued a notice dated

01-05-2017 on the consequences of non drawal of gas. The cost of power per unit from the 1st respondent worked out at Rs.3.577 for FY 2016-17, which is lower than other suppliers of power. The petitioners gave the details of the actual costs paid to the 1st respondent in that year and claimed that in the Aggregate Revenue Requirement for 2017-18, incorrect numbers relating to the cost of generation crept in, in respect of the 1st respondent reflecting a price of Rs.4.36 per kWh due to which the Commission did not agree for dispatch from it. In fact, the variable tariff per kWh comes to Rs.2.30. The cost of power as per the proposed Power Purchase Agreement for 2017-18 will be Rs.3.55 with a PLF of 40%. The power of the 1st respondent falls within the merit order and hence, the applicants/petitioners seek permission to procure cheaper power.

3. In respect of the 2nd respondent, the Power Purchase Agreement expired on 18-04-2016 and the petitioners decided to renew the Power Purchase Agreement for fifteen years. The Commission permitted dispatches from the 2nd respondent in the Tariff Order 2016-17 upto 711.67 MU in that year, though the Power Purchase Agreement has lapsed. In 2017-18, the 2nd respondent was not considered for dispatches, as the cost of generation was much more than the approved cost and in the Aggregate Revenue Requirement for 2017-18, incorrect numbers of cost of generation crept in, in reflecting the price of power at Rs.4.51 per kWh due to which the Commission did not permit procurement of power from the 2nd respondent. However, the higher values then projected yielded place to lesser variable cost and as per the present gas availability, the cost to be paid at 55% PLF will be Rs.1.13 fixed cost and Rs.2.10 variable cost, making total cost per unit Rs.3.23 ps. The 2nd respondent also will fall within the merit order dispatch and supply cheaper power. The petitioners have to suffer procurement of higher cost power from other sources if

power from the 2nd respondent is refused to them and they will approach the Commission for renewal of the Power Purchase Agreement and for tariff after getting approval of the State Government. The Gas Authority of India Limited had to schedule the allocated gas to Andhra Pradesh Gas Power Corporation Limited, which is scheduling additional quantum of power to their industrial consumers, who are using that cheaper energy than availing energy from the petitioners, who are losing revenue to that extent. In case of exigencies, the petitioners are forced to bid in the exchanges for maintaining uninterrupted power supply, the price of which is higher. Hence, the petitioners sought for approval to procure power from the 2nd respondent on adhoc basis, de hors the question of renewal of the Power Purchase Agreement, fixing an adhoc single part tariff in terms of the existing Power Purchase Agreement.

4. After expiry of the Power Purchase Agreement with M/s. GVK Industries Limited dated 19-04-1996 on 20-06-2015, the petitioners exercised buyout option in respect of 216 MW gas based power project. The Government of Andhra Pradesh approved the issuance of buyout notice dated 19-06-2015 by the petitioners and the petitioners took over the plant on 22-04-2016 for a buyout amount of Rs.333.32 crores under an Agreement. The petitioners are operating the power plant since 22-04-2016 and the buyout process is not yet complete. The power from M/s. GVK Industries Limited was not considered in the Tariff Order 2017-18. But this being the own project of the distribution companies, generation and supply were confirmed. Though higher values were projected towards fixed cost and variable cost in the Aggregate Revenue Requirement for 2017-18, the various factors projected by the petitioners may be considered to revise the variable cost at Rs.2.20 per kWh and fixed cost at Rs.0.79 per kWh for merit order dispatch until GT's C-Inspection

expenditure is undertaken spread over to future years; hence, the application for a revision of tariff and for approval for procurement of power in respect of the three projects.

5. The Commission decided to place the subject matter in public domain and issued a public notice inviting views/objections/suggestions of any interested person/stakeholder.

6. Earlier, the Chief Engineer (Commercial), Andhra Pradesh Power Coordination Committee addressed a letter dated 03-05-2017 to the Commission about the petitioners proposing to renew the original Power Purchase Agreement for a period of ten years with a negotiated tariff including a fixed cost tariff @ Rs.180 crores per year and variable energy charges, the draft Power Purchase Agreement dated 28-04-2017 being enclosed for the purpose of approval of the State Government. The proposed fixed charge per unit at Rs.0.71 per kWh with a threshold PLF of 80% and variable cost at present gas price of Rs.2.09 at the accepted station heat rate with Naphtha as the alternate fuel may be approved for procurement of power and after such approval, the Power Purchase Agreement will be submitted for approval and approval of tariff. The petitioners again addressed a letter dated 20-05-2017 stating that per unit cost of energy generated by the 1st respondent will be only Rs.3.55 which is less than the cost of other sources and hence they may be approved to procure power from the 1st respondent de hors the renewal of the Power Purchase Agreement with an adhoc single part tariff in terms of the existing Power Purchase Agreement, subject to later adjustment.

7. Similarly, petitioners addressed a letter dated 20-05-2017 to the Commission about the decision for renewing the Power Purchase Agreement with the 2nd

respondent for fifteen years and stating that the power unit cost of energy is only Rs.3.54 and not the cost shown in the Aggregate Revenue Requirement. Procurement from the 2nd respondent is cheaper and hence the petitioners requested for approval for procurement of power fixing an adhoc single part tariff in terms of the existing Power Purchase Agreement, subject to a later adjustment.

8. However, later the petitioners addressed letters dated 22-05-2017 withdrawing the earlier letters and intimating about their decision to file a separate petition.

9. Similarly, in respect of the Godavari Gas Power Plant, the first letter dated 18-05-2017 from the petitioners was narrating the sequence of events and stating that no Power Purchase Agreement is required, as the power plant is fully owned by the petitioners and requested that only the revised variable cost of Rs.2.20 per kWh as single part tariff may be considered for merit order dispatch, ratifying the action of the petitioners in continuing the generation and allow payment of lower fixed cost on monthly basis at Rs.0.79 per kWh till GT's C-Inspection expenditure is undertaken. This letter was also required to be withdrawn by a letter dated 20-05-2017 intimating that a separate petition will be filed. The Commission permitted the withdrawal of the proposals with a liberty to file a petition as sought by the petitioners.

10. Sri M. Venugopala Rao, Senior Journalist & Convenor, Centre for Power Studies, Sri Ch. Narasinga Rao, State Secretariat Member, CPI (M), Andhra Pradesh, Sri A. Punna Rao, Sri Penumalli Madhu, State Secretary, CPI (M) and Sri B. Tulasidas placed identical objections before the Commission. The A.P. Spinning Mills Association (APSMA), the APSEB Engineers' Association, The Federation of Farmers' Associations, Andhra Pradesh and the APSEB Assistant Engineers' Association also sent their objections. The petitioners gave their para-wise replies

and Sri M. Venugopala Rao made further submissions dated 18-08-2017, 07-10-2017, 21-10-2017, 28-10-2017 and 03-11-2017. The APSEB Engineers' Association gave further written submissions dated 21-10-2017, 28-10-2017 and 15-11-2017. The APSEB Assistant Engineers' Association filed further written submissions dated 21-10-2017. The petitioners filed their reply to the objections of Sri M. Venugopala Rao dated 21-10-2017.

11. Sri Challa Gunaranjan, learned counsel for the 1st respondent during hearing on 01-07-2017 stated that the 1st respondent consents to the grant of reliefs prayed for in the petition. The 2nd respondent filed a Memo dated 21-10-2017 stating among other things that the Goods & Services Tax (GST) on gas transportation charges was reduced from 18% to 5% reducing consequently the variable cost and the total cost per unit to Rs.3.47, as opposed to Rs.3.52 mentioned in the memo of the petitioners dated 13-10-2017. The petitioners are also availing rebate at Rs.2.5% which is equal to Rs.0.09 per unit. The procurement of power from the 2nd respondent, hence would be at Rs.3.38 per unit. Even the purchases by the petitioners from the exchanges from April to August, 2017 were for Rs.3.76, Rs.3.64, Rs.3.44, Rs.3.49 and Rs.4.04 averaging at Rs.3.67 in respect of 579.93 MU purchased. Hence, the 2nd respondent prayed for approval of the procurement of power from it by the petitioners. The 2nd respondent again filed a Memo on 25-10-2017 stating that during the course of proceedings on 21-10-2017, it offered to reduce the power unit cost and it will reduce the cost to Rs.3.31 ps at which rate procurement of power from it may be approved.

12. During the hearing on 07-10-2017, the petitioners and the 1st respondent were requested to furnish verifiable material to substantiate the claim that payment of fixed and variable cost to these three generators will be less than the variable cost

payable to any other generators, who are permitted in the merit order dispatch as per the Tariff Order, thereby making even the payment of fixed cost to those generators not an additional burden to the distribution companies. The petitioners filed a Memo on 13-10-2017 giving particulars of comparable fixed cost and variable cost. During the hearing on 28-10-2017, learned Standing Counsel for the petitioners stated that any further information sought for by Sri M. Venugopala Rao in his objections cannot and is not being furnished.

13. The first set of identical objections from Sri M. Venugopala Rao and others contended that a single petition for purchasing power from three generators was improper and illegal. Making the letter from Andhra Pradesh Power Coordination Committee dated 03-05-2017 and the draft Power Purchase Agreement enclosed to it as part of the proceedings is improper. The expired Power Purchase Agreements of the three projects have no legal sanctity or relevance and were without any consent from the Commission. The permission requested concerning 1st and 2nd respondents cannot be sought, without transparent and competitive bidding for selection and approval by the Commission of the need to purchase power. Revision of tariff or modification of terms cannot arise when there are no legally tenable Power Purchase Agreements. The consent of the Commission after a public hearing was not sought in respect of the buyout of GVK plant though Rs.289.55 crores were paid by the distribution companies to bail out the owners of GVK. Godavari Gas Power Plant in tune with the dual role of the distribution companies. The petition shows undue preference to private generators for extraneous considerations and the agreement for renewal of gas supply and transport agreement for five years for the first respondent shows the undue priority to private generators. The extension of Power Purchase Agreement proposed for ten years is improper when GST with

GAIL (India) Limited was agreed for five years and when cases are pending in the High Court and APERC, renewing the Power Purchase Agreement is unhealthy. The generation of energy by the 1st respondent should have been confined to 55% PLF and a piecemeal proposal for procurement of power unrelated to long term load forecast and procurement plan subverts the regulatory process damaging larger consumer interest when substantial surplus power is available. The CB CID reports submitted to the State Government in respect of the three plants were kept in cold storage without any action. Supply of natural gas should have been ensured for the new four gas based power projects having long term Power Purchase Agreements and in claiming the cost of power to be cheap, the new four gas based power projects were not compared in respect of the cost of energy or fixed charges. The distribution companies which withdrew the forty one Power Purchase Agreements they had with Non-Conventional Energy generators due to having a surplus of 12013.95 million units as per the Tariff Order of 2017-18 are irresponsible in proposing to procure power from the 1st and 2nd respondents. The distribution companies had to pay Rs.2102.44 crores for backing down surplus power and such avoidable burden will increase if further power is procured from the 1st and 2nd respondents. Quoting the data from "Indian Electricity Market Data Analysis" made by the Power System Operation Corporation Limited, the objectors contended that the distribution companies have to purchase power from the existing Power Purchase Agreement holders irrespective of cost and if further surplus power is purchased, fixed charges have to be paid by the consumers for backing down additional surplus power. When long term load forecast, resources and procurement plans and State Electricity plan are pending before the Commission, irresponsible decisions adversely affecting larger public interest cannot be taken. The distribution

companies have no binding obligation to continue to procure power from the three projects and the three projects have to be dealt with on case by case basis. Therefore, the objectors desired all the details and data regarding buyout of GVK plant, renewal of Power Purchase Agreements and proposed tariffs to be provided to the public at large and to consider the requests only after a final view is taken on long term load forecast plans of Transmission Corporation of Andhra Pradesh Limited and the distribution companies.

14. A.P. Spinning Mills Association in their objection while requiring the Power Purchase Agreements etc., to be produced stated that the gas supply agreement is a fait-accompli and it has to be examined whether the proposed power procurement will add to the problem of plenty and the attendant fixed cost burden for the backed out generation. The distribution companies cannot lament against supply of cheaper power to industries by Andhra Pradesh Gas Power Corporation Limited. The purchase of GVK plant is also a fait-accompli. The objector desired the cost benefit analysis to the consumer be made.

15. The APSEB Engineers' Association in its objection dated 01-07-2017 stated that apart from the surplus energy estimated in the Tariff Order of 2017-18, the Andhra Pradesh Generation Corporation Limited (APGENCO) decided to stop allocation of power to Telangana State and Telangana State Power Generation Corporation Limited (TSGENCO) decided not to schedule power from their plants to Andhra Pradesh, leaving a net off power of 459 MW to Andhra Pradesh. Thus, 2173 MW power due to stoppage of power allocation to Telangana State further aggravated the situation. Andhra Pradesh State Load Dispatch Centre (APSLDC) is issuing backing down instructions to Andhra Pradesh Generation Corporation Limited (APGENCO) based on merit order dispatch but Andhra Pradesh distribution

companies are liable to pay fixed charges for the shut down units. That apart, the Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) entered into Power Purchase Agreements with wind and solar power developers, who have must run status, of a capacity of 5517 MW. With supply becoming much higher, renewal of Power Purchase Agreement with the 1st respondent for ten years will increase the liabilities of the distribution companies and the gas availability is only 40% of the capacity of the gas based stations and the fixed cost varying between Rs.0.71 to Rs.0.90 per kWh from years 1 to 10. The availability of fuel and health of the machine were not stated in the Power Purchase Agreement and 100% capacity was declared by the 1st respondent without taking into account the availability of fuel. The fixed cost component then will be around Rs.1.40 to Rs.1.80. Power purchase cost due to payment of fixed charges to thermal stations will increase for ten years more and even regarding the variable cost, the distribution companies will be liable to pay the minimum fuel charges and positive imbalance charges in case of backing down. The variable cost will increase significantly if the distribution companies have to pay penalties for non-consumption of available gas, though a 06-11-1995 notification by the Government of India exempts the State Electricity Board from any fuel risk. Hence, they desired and sought for non-grant of approval to the renewed Power Purchase Agreement between the distribution companies and the 1st respondent.

16. APSEB Assistant Engineers' Association in their objections dated 01-07-2017 stated that 80% of the tariff component is due to power purchase cost only and due to addition of 2500 MW capacity of wind and solar power, the State Load Dispatch Centre (SLDC) has to issue backing down instructions to APGENCO stations for which fixed charges have to be paid. The power purchase cost will increase in case

of the Power Purchase Agreement with the 2nd respondent and the penalties payable by the distribution companies are significant. In any emergency, power is available in open market at lower cost through competitive bids, without paying the fixed cost.

17. Federation of Farmers Associations, Andhra Pradesh, Guntupalli in their representation dated 29-06-2017 stated about the violation of rights of the people, who are threatened against expressing their opinions even during the public hearings.

18. The petitioners in their response to the first set of objections of Sri M. Venugopala Rao and four others again reiterated that a single petition was filed as an error committed in the Aggregate Revenue Requirement inadvertently in the tariff calculations was common to the three projects. As negotiation and finalization of the Power Purchase Agreement is a long drawn process, the distribution companies seek to extend the expired Power Purchase Agreements on adhoc basis on the same terms and conditions. The distribution companies took a decision to procure power which is cheaper and lower than the ceiling price fixed by the Commission and in the Aggregate Revenue Requirement of 2016-17 also, power was availed from these stations, though the Power Purchase Agreements expired by then. Consequential procedures on expiry of Power Purchase Agreements were initiated before their expiry under intimation to the Commission and the revision of tariff was sought only for 2017-18 but not for long term purchases. The tariff was reduced to the extent possible through negotiations on payment of Rs.180 crores. Fixed charges were avoided by acquiring GVK plant on 22-04-2016 and the project was purchased at 50% of the cost. The project is on Ac.211.73 % cents. GVK will pay lease amount towards utilization of common facilities for which an agreement

was already entered into. No tariff is decided for the power generated by the distribution company projects. The Gas Supply Agreements are renewed for ten years as per the Government of India policy. The capacity of 1st respondent plant is the subject of the pending cases before the Hon'ble High Court. The complaints by the Transmission Corporation of Andhra Pradesh Limited against the 2nd respondent on capital cost failed before the police and the Commission. The four new gas based plants have agreements with the Reliance Gas while the three plants have Gas Supply Agreements with ONGC gas. As dispatches from renewable energy are highly unpredictable, generation from gas based stations will effectively maintain the grid discipline due to quick response time. The prices and availability in exchanges are volatile and the prices go up when the distribution companies seek to purchase power. The process of renewal/buyout in respect of the three stations started six months before the expiry of the Power Purchase Agreements and the solar power produced is only 20 to 30% PLF of installed capacity and vagaries of weather make huge dependence on renewable sources not viable.

19. The petitioners in their response to the objections of Engineers' Association and the AP Spinning Mills Association stated that the emphasis is on pure merit order dispatch including the State owned generators. The utilities are searching for cheaper sources of energy and to avoid any damage to grid stability due to sudden variation in renewable energy, gas stations have to be in the energy portfolio. The capacity declaration clause is incorporated in Schedule "B" of the draft Power Purchase Agreement. The Power Purchase Agreements are available on the websites of Transmission Corporation of Andhra Pradesh Limited and the Commission.

20. Sri M. Venugopala Rao in his submissions on 18-08-2017 stated that the so called apparent common error claimed to have been made inadvertently by the distribution companies in tariff calculations of the three projects is irrelevant. Why buyout is not economically viable in case of 1st and 2nd respondents is not explained. The question of revision of tariff does not arise and no power is needed to be purchased from any plants with which the distribution companies have no legally binding obligations to purchase power. The claim that the power from these three stations is cheaper is not correct and without data. For new IPPs, the variable cost worked out to Rs.1.90 per unit and fixed cost is Rs.1.08 ps per unit whereas it is Rs.2.05 and Rs.1.42 for the 1st respondent and Rs.2.15 and Rs.1.45 for the 2nd respondent. The total charges worked out to Rs.2.98 per unit for the new IPPs and Rs.3.47 per unit for 1st respondent and Rs.3.60 per unit for the 2nd respondent. Whether 1st respondent agreed to reduce the tariff in negotiations was not stated and when litigation on installed capacity is pending, why should power be purchased from the 1st respondent? Distribution companies may be directed to state whether GVK cleared the loan dues to the banks for this plant and what are the conditions of lease agreement for use of the land. These aspects of buyout price and lease amount have to be determined after public hearing for assessing the tariff and efforts have to be made to get the gas allocation to Godavari Gas Power Plant, if not scheduled to 1st and 2nd respondents. The replies of the distribution companies are to the detriment of the larger consumer interest and entering into long term Power Purchase Agreements to purchase high cost Non-Conventional Energy power is irrational, more so, exceeding the Renewable Power Purchase Obligation. The arguments of the distribution companies against the danger of buying high cost power is against their own long term Power Purchase Agreements for buying high

cost power without any imperative need and even very low PLF will not absolve the distribution companies of paying full fixed charges. These plants were not included in the long term load forecast and plans. While the scope for manipulation in exchanges cannot be ruled out the power from central generating stations was not fully drawn and the Southern States came to an understanding to purchase power from one another depending on availability and requirement linked to power exchange prices.

21. Sri M. Venugopala Rao in his further submissions dated 07-10-2017 stated that the distribution companies have to pay Rs.62 crores and Rs.45 crores more per annum to the 1st and 2nd respondents than what they have to pay to new IPPs if power is purchased as proposed. So it will be prudent to get gas allocated to the new IPPs and purchase power from them and get the reduction of tariff by Rs.1295 crores during the proposed periods of Power Purchase Agreements. Vemagiri project should be given priority in the allocation of natural gas and the distribution companies have eliminated these plants from their revised long term load forecast.

22. In his further submissions dated 21-10-2017, Sri M. Venugopala Rao stated that information relating to non-generation and supply of power from coal based thermal power stations has to be furnished to know the severe coal supply constraints. The thermal power, stopped supply to Telangana State distribution companies from June, is available additionally for an installed capacity of 1514 MW. The quantum of thermal power available to Andhra Pradesh distribution companies under bundled power from NTPC should be specified and the implementation of backing down of thermal power stations should be as per merit order dispatch. This information has to be furnished. The distribution companies are silent about the new

gas based private power projects and recent heavy rains lowered the demand for power and increased the generation of hydel power. The information relating to backing down power by SLDC should be examined to confirm whether the principles of merit order dispatch are adhered to. But the distribution companies did not submit any information about Godavari Gas Power Plant to show its variable cost to be less plus the fixed cost payable to the other generators for backing down. The learned objector gave calculations to show that the purchase of power from 1st and 2nd respondents by backing down the other units as per the merit order dispatch would impose avoidable burden on the distribution companies and the consumers. The 1st and 2nd respondents stand at 17th and 15th places in that merit order. The burden of purchasing 432 MU for six months from 1st and 2nd respondents as proposed will not be there for purchase for short periods in case of urgent need.

23. Sri M. Venugopala Rao in his further submissions dated 28-10-2017 stated about the principles of merit order dispatch as evidenced by the information referred to by him which shows avoidable burden of Rs.0.531 per kWh on the consumers. If PGCIL charges are included, the avoidable burden will be more and even the offer by the 2nd respondent to reduce its tariff to Rs.3.31 ps per kWh cannot justify the purchase. The distribution companies showed the variable cost of NLC wrongly. There is no documentary evidence to show the anticipated and severe coal supply constraints for next six months. The learned objector claimed that the information sought for by him was not provided by the distribution companies.

24. Sri M. Venugopala Rao ultimately in his final submissions dated 03-11-2017 stated that the way the public hearing has been conducted and the "Commission responded to their request has been found wanting in ensuring the regulatory

process in a meaningful and purposeful way". Though the learned counsel for the petitioners bluntly refused to furnish any required information, the "Commission expressed its helplessness to get the relevant information", though it has the power of Civil Court. The Chairman of the Commission expressed the view during public hearings that no surplus power is available even without any relevant information to substantiate such a claim. The ever changing and quickly fading stand of the distribution companies about the revised methodology of merit order dispatch or inadvertent errors in the Aggregate Revenue Requirements or inflated cost of NLC etc., confirm that the petitioners are under strong pressure. Still it is strange that the Commission is harping on the representatives of the Engineers Associations being expected to know these things. The Commission and the distribution companies expecting the learned objector to believe that there is no surplus power negates the spirit of regulatory process and the public hearings. If the Commission has such relevant information, it should have been made the public to establish transparency and accountability. It is difficult to understand the silence and unresponsiveness of the Commission and it's reluctance to exercise its legitimate authority. Six months in the financial year have been passed without purchasing power from 1st and 2nd respondents without any problem. What is the basis for presumed availability of power through exchanges or competitive bidding at higher rates only? How can the Commission give consent on the mutual understanding between the petitioners and the respondents without any due process or Power Purchase Agreement? Still as suggested by the Chairman of the Commission to suggest what conditions should be imposed for purchase of such power, the learned objector is making suggestions in academic interest only that the distribution companies may be directed to go through exchanges or competitive bidding for additional power where required,

should ensure competitive tariffs and the 1st and 2nd respondents have freedom to come through the same. If the petitioners are intending to purchase power from 1st and 2nd respondents, it may direct them to purchase power at the fixed charges that were applicable at the time of expiry of the Power Purchase Agreements by working out the same per unit based on 80% PLF. In other words, there should be no payment of fixed charges for deemed generation and no reworking out of fixed charges based on actual generation. There is nothing on record that 1st and 2nd respondents have incurred additional capital expenditure. Fixed and variable charges for both should be firm and any purchase should be strictly following merit order dispatch, without any obligation for the distribution companies to pay fixed charges or penalties. Fixed charges and transmission charges to be paid to the backed down projects should also be taken into account. The Commission should respond in its order to all the relevant issues and points raised by the learned objector.

25. APSEB Engineers' Association in its letter dated 15-11-2017 pointed out that the petitioners worked out the levelized fixed charges and variable charges for the 1st and 2nd respondents at 40% and 55% PLF respectively. But, as per the APERC Regulations, IPPs must operate at 80% PLF to get full fixed charges. So the operating norms to be followed and penalty clause should be incorporated in the renewal of the Power Purchase Agreement. Hence, no short term purchases or Power Purchase Agreements may be permitted.

26. APSEB Engineers' Association in its earlier letter dated 21-10-2017 contended that RTPP, SDSTPS and Dr. NTPPS are in running condition except for backing down instructions by SLDC. The 1st respondent gets more profit if it goes to the exchange and in approaching the distribution companies, it kept an eye on the

fixed charges. The distribution companies sustained loss due to gas allocation from Andhra Pradesh Gas Power Corporation Limited for the reasons stated by the objector. The distribution companies did not submit the information relating to implementation of backing down as per the merit order dispatch and the total surplus power from the tariff order, any scheduled net off power and allocated power from NTPC is 2598 MW. This is apart from the generation of hydel power after rains. The State Public Sector undertaking APGENCO becomes a waste if private purchases are so allowed and the 1st respondent should also be subjected to a buyout.

27. APSEB Engineers' Association in its further submissions dated 28-10-2017 stated that the installed capacity is almost 200% to the peak demand and in fact APSLDC is curtailing the units of APGENCO in order to maintain grid stability. Huge public money is wasted if public sector units are thus backed down and it is better to buy out the plants of both the 1st and 2nd respondents. Hence it requested that renewal of the Power Purchase Agreements may not be approved.

28. APSEB Assistant Engineers' Association in its letter dated 21-10-2017 gave the calculations showing that unit cost is around Rs.5.7 for the respondents while the unit cost on the average for purchase from the exchanges in 2017 is Rs.3.66. There is no need to procure power from the 1st and 2 respondents in the power surplus scenario.

29. The petitioners in a Memo filed on 13-10-2017, calculated the unit cost in different contingencies, actual cost in 2016-17, the effect of revision of natural gas price from 01-10-2017, the variable cost of NLC Stages 1 & 2 and the average cost on energy purchases from exchanges from April to August, 2017. The petitioners

stated about the allocation of excess gas not scheduled to the 1st and 2nd respondents to be resulting in supply of cheaper energy to industrial consumers by APGPCL resulting in loss to the distribution companies. The distribution companies should be permitted to avail cheaper generation to the extent of 432 MU more so due to anticipated severe coal constraints for next six months, for the grid availability and stability and due to decision of the State Government, the distribution companies shall be allowed to purchase power from these three plants.

30. The point for consideration is whether the procurement of power from the 1st and 2nd respondents and Godavari Gas Power Plant by the petitioners should be approved for the year 2017-18 as prayed for.

31. The Interlocutory Application herein is only seeking the relief of approval for procurement of power from respondents 1 and 2 and Godavari Gas Power Plant during the year 2017-18, while the Power Purchase Agreement with the 1st respondent admittedly expired on 01-01-2016. The proposal to renew the Power Purchase Agreement for ten years on mutually agreed tariff is not the subject matter of the present Application, while the petitioners claimed the procurement of power from the 1st respondent to have been stopped since 07-04-2017. The letter dated 03-05-2017 along with the draft Power Purchase Agreement for approval for procurement of power from the 1st respondent was stated to be pending with the Commission. Similarly, the Power Purchase Agreement between the petitioners and the 2nd respondent also expired on 18-04-2016 and it was stated that the petitioners submitted proposal of renewal of the Power Purchase Agreement with the 2nd respondent to the State Government. After receiving it, they will approach the Commission for renewal and fixation of tariff. The petitioners therefore requested for approval for procurement of power from the respondents 1 and 2 de hors the

approval of renewed Power Purchase Agreements. They also requested for fixation of an adhoc single part tariff in terms of the existing Power Purchase Agreement subject to adjustment later on approval of renewal of the Power Purchase Agreement and fixation of tariff. In so far as Godavari Gas Power Plant is concerned, the petitioners themselves exercised buyout option and took over the power plant with the approval of the State Government. They claimed that the power plant continued generation and supply being the own project of the petitioners and requested for revising the fixed and variable cost in the manner presented by them.

32. While the petitioners did not place any information before the Commission so far about any final decision on the ownership of Godavari Gas Power Plant, it is only after completion of the total buyout process that the position will be clear about the appropriate future course of action regarding the manner of procurement of power from the said plant or its price.

33. As already stated, the letters addressed on behalf of the petitioners on 03-05-2017 and 20-05-2017 with proposals for purchasing power from the respondents 1 and 2 respectively were withdrawn by the letters dated 22-05-2017 and the petitions said to be in the process of filing on the subject matter were not yet filed before the Commission. Therefore, the request for approval of procurement of power from the respondents 1 and 2 under any Power Purchase Agreements in renewal or fixation of any tariff there-under are not under consideration of the Commission in this Interlocutory Application or otherwise as of now. Similar is the case of Godavari Gas Power Plant in respect of which original request was made by a letter dated 18-05-2017 for revising the variable cost, paying lower fixed cost and ratifying the continued generation of power from that plant, which was withdrawn by

a letter dated 20-05-2017 and in the case of this plant also, any petition proposed to be filed, was not filed so far. As already stated, the letter dated 05-06-2017 from the Commission informed about the acceptance of the request for withdrawal of the proposals with liberty to file petitions. In view of the proposal of the petitioners to file appropriate petitions regarding the subject matter of their earlier letters extracted in detail above, the subject matter of those letters or the proposed petitions except to the extent of any of their contents overlapping the contents of the present Interlocutory Application, may not be open for examination and consideration on merits herein as the same may result in prejudging the issues that may arise for consideration in such petitions on the material that may be placed before the Commission by the petitioners or other stakeholders in such petitions. Under the circumstances, the Commission is compelled to tread carefully a narrow and restricted path to confine its consideration only to the relevant questions involved in the Interlocutory Application.

34. The present Interlocutory Application has been filed under section 62 (4) and section 86 (1) (b) of the Electricity Act, 2003 and Regulation 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. Section 62 (4) provides that no tariff or part of any tariff may ordinarily be amended more than once in any financial year, except any changes under fuel surcharge formula. Section 86 (1) (b) makes it a function of the Commission to regulate electricity purchase and procurement process of distribution licensees including its price through agreements for purchase of power for distribution and supply within the State. Regulation 55 of the Business Regulations saves the inherent powers of the Commission. Regarding inherent powers, the Commission is bound to confine itself to the limits laid down by the Hon'ble Supreme Court in its

latest decision in Gujarat Urja Vikas Nigam Limited Vs. Solar Semiconductor Power Company, C.A.No.6399 of 2016 decided on 25-10-2017. Referring extensively to the provisions of the Electricity Act, 2003, the Hon'ble Supreme Court noted that an amendment to tariff by the Regulatory Commission is permitted under section 62 (4) read with 64 (6) and section 86 (1) (a) clothes the Commission with the power to determine the tariff and under section 86 (1) (b), it is for the Commission to regulate the price at which the electricity is to be procured from the generating companies. Noting that there cannot be any quarrel with regard to the power conferred on the Commission with regard to fixation of tariff for the electricity procured from the generating companies or amendment thereof in the given circumstances, the Hon'ble Supreme Court held that the inherent power of the Commission is available to it for exercise only in those areas where the Act or Rules are silent and there cannot be any exercise of the inherent power for dealing with any matter which is otherwise specifically provided under the Act. The interests of the consumers are to be safeguarded in determination of tariff with notice to the public after considering all the suggestions and objections received or the amendments thereof. The Commission being a creature of a statute cannot assume itself any powers which are not otherwise conferred on it.

35. The Electricity Act, 2003, a consolidating legislation was intended among other things for protecting interest of the consumers and rationalization of electricity tariff. The State Commission shall ensure transparency while exercising the powers and discharging its functions as per section 86 (3). The Conduct of Business Regulations, 1999 and the specified powers of a Civil Court enumerated in section 94 guide the Commission in its proceedings.

36. With this background it should be noted that any of the stakeholders also did not question the jurisdiction of the Commission to consider and decide the Interlocutory Application on merits.

37. In the identical objections of Sri M. Venugopala Rao and others first filed, buyout of the plant from GVK and various questions relating to the same including the absence of any registered Sale Deed so far was questioned in detail but those issues may be the relevant subjects for consideration, if the Commission is approached for any relief relating to buyout or transfer of ownership or fixation of any tariff. The questions raised in that regard may be of some significance but if Godavari Gas Power Plant is fully owned by the petitioners as claimed, whether the same legal persons being the owners of the generating companies and the distribution licensees will obviate the necessity of a Power Purchase Agreement is not crucial for avoiding any arbitrariness or detriment to larger consumer interest in fixing the tariff for such power. As the transfer of ownership and registration of a Sale Deed are still awaited, it will be appropriate not to express any opinion on the same.

38. The objections of A.P. Spinning Mills Association dated 30-06-2017 sought for the copies of the Power Purchase Agreements of all the three generators but as already stated, any Power Purchase Agreements are not the subject matter of the present consideration. The advice of the State Government due to which power was purchased from the 1st respondent upto 07-04-2017 is not provided with this proceeding to confirm or deny whether such advice has been placed before this Commission and whether any orders are passed by this Commission in that regard. While the gas supply agreement has of course become a fait-accompli as pleaded by the Discoms, the same in no way fetters this Commission from discharging its

functions relating to any arrangement or agreement between the petitioners and the 1st respondent. The A.P. Spinning Mills Association rightly cautioned against adding to the problem of plenty and burdening the consumers with fixed costs for backing down already approved sources but the petitioners claimed such burden to be less than the burden of paying fixed cost to the backed down generators and there is no clear proof that such a claim is false or inaccurate. While supply of cheaper power by the APGPCL to its industrial consumers cannot be a matter of complaint for the petitioners, the manner of allocation of gas by GAIL is not a relevant factor to consider reasonableness or acceptability of procurement of power from the 2nd respondent by the petitioners. While the plans of procurement of power need to be revised in tune with the proposed procurement, the petitioners claimed to have made a cost benefit analysis on any questionable terms in respect of the consumers according to their replies.

39. The APSEB Engineers' Association was mainly referring to the fixed and variable cost and penalties etc., to contradict the petitioners. In its objections dated 01-07-2017 the estimated surplus energy for tariff year FY 2017-18, the addition of unallocated power to Telangana from APGENCO and stoppage of power allocation to Telangana State were claimed to aggravate to 2173 MW and if the mission of the State Government were to reduce the tariff from the next year, the increase in the fixed and variable cost is contrary to it. These contingencies were conceived by the association with reference to renewal of the Power Purchase Agreement with the 1st respondent for a further period of ten years while the present Application is confined to short term purchases for this financial year claimed to have been necessitated for the reasons claimed by the petitioners.

40. The APSEB Engineers' Association in its further objections dated 21-10-2017 suggested that the buyout option in respect of the 1st respondent will be beneficial to the State Government and the consumers but the same is a decision to be taken by the petitioners in accordance with their contractual rights on merits on which this Commission cannot express any advance opinion before any such decision is taken and placed before it for consideration. The Association considered it more profitable for the 1st respondent if it sells its power through power exchange than eying the fixed charges from the petitioners. But the consideration herein is not what is profitable to the 1st respondent but to the petitioners and the consumers. Similarly, the anticipation of severe coal shortage for six more months by the petitioners and contrary expectations of the objectors are contingent on future circumstances not susceptible to any mathematical assessment by the Commission. Similarly the circumstances relating to new IPPs i.e., GMR, Gautami, Konaseema and GVK extension or the running of APGENCO plants, RTTP, STSPPS and Dr. NTPPS may be relevant to assess any long term impact which may not be necessarily true of short term purchases. The Association also referred to the absence of comparison of variable cost of all the generators, implementation of backing down instructions, increase in transmission losses, dropping voltage profile, increase in hydel generation in addition to the surplus of 2598 MW etc., which aspects may require a deeper study in the overall planning of the power sector and sacrificing public sector units of APGENCO having a hidden but a strong social impact is undoubtedly a strong circumstance requiring a delicate balancing of interests of public and private generators.

41. In their further objections dated 28-10-2017, the Association again canvassed about protecting public sector units and huge public money and the advisability of

buying out the plants of the 1st and 2nd respondents as done in the case of Godavari Gas Power Plant. As already stated, these are issues on which a decision cannot be arrived at within the scope of this Interlocutory Application.

42. In the last of their representations dated 15-11-2017 with reference to the query by the Commission during the public hearing as to what would be the appropriate conditions to be imposed in case such procurement of power were to be accepted, the Association suggested that as per the Regulation of the Commission, the operating norm should be 80% PLF to get full fixed charges with penalties for under generation and as the AP DISCOMS did not substantiate their decision with relevant data when the PLF of APGENCO is more than 80% and not 37% as projected by AP DISCOMS. Hence, they sought for rejection of the request to protect the interests of the consumers and this suggestion to clarify the operating norms to be followed has to be kept in view, while it is true that the data produced by the AP DISCOMS is not exhaustive but is random.

43. The APSEB Assistant Engineers' Association raised similar objection on 01-07-2017 about possible increase of power purchase cost by entering into any agreement with the 2nd respondent and the availability of emergency power at lower cost in open market through competitive bids without paying fixed charges. But the objection was against the proposed renewal of the PPA with the 2nd respondent. In their further objections dated 21-10-2017, the Association gave its calculations to suggest the unit cost of the respondents to be about Rs.5.70. It is contrary to the calculations given by the petitioners. The Association reiterated that AP DISCOMS can buyout the two units but not procure power from them levying excess burden on the consumers. The statistical data of the Association and the petitioners are at

absolute variance and a statement from the public utility may deserve preference in case of such divergence.

44. The Federation of Farmers' Association has not touched upon any of the questions directly in issue herein.

45. This leaves the different objections of Sri M. Venugopala Rao (and other identical objectors) from 16-06-2017 to 03-11-2017 and the responses of the petitioners to some of the objections of the stakeholders.

46. A single petition for purchase of power from three generators was opined to be improper and illegal, but no specific provision of law or precedent to that effect is placed before the Commission to be relied on in this Interlocutory Application. APPCC's letter or draft Power Purchase Agreement are not under consideration herein, hence making any inquiry into the legal sanctity of APPCC not required here. While the Power Purchase Agreements of those generators which expired due to efflux of time have no relevance for the present consideration except forming part of the chronology of events, as already stated, the terms of any proposed renewal Power Purchase Agreement are also not the subject of the consideration herein and any questionability in terms of propriety therefore does not arise. That competitive bidding is the only route for even short term purchase of power is not shown to be mandatory under any provision or principle and revision and review of or mutual negotiations for tariff or modified terms of the Power Purchase Agreement etc., may not be meticulous expressions but the request of the petitioners plainly and simply understood is for procurement of short term power from the three generators at the price indicated by them for the financial year 2017-18. The buyout of GVK plant and the various issues raised surrounding GVK are beyond the scope of the present

Interlocutory Application and whether the same legal entity can enter into a Power Purchase Agreement with itself is a moot question, a research into which is not indispensable herein. The motives behind the proposal for procurement of power herein, the reasons for renewal of gas supply and transport agreement of the 1st respondent, the pendency of W.P.No.7838 of 2004 and connected matters etc., were suggested to be indicative of undue preference to Lanco (1st respondent) but they can have no direct impact in considering the reasonableness of procurement of power sought for herein. It is true that a long term load forecast and procurement plan etc., are the subject of a pending public hearing but the conclusion of the same is likely consume some more time while the present request is for a short term power supply for the present financial year. An inquiry by CBCID is claimed to have been ordered by the State Government into the various alleged manipulations of three generators and the consequential reports are claimed to have been kept in cold storage about which aspects, there is no material before the Commission in this inquiry. While the four gas based power projects which ought to have been preferred for supply of gas according to the objectors are also private players, the learned objectors have raised issues of comparability of the fixed charges and variable charges of different generators and the Discoms claimed such comparison to be in favour of the three generators herein. Purchase of this power in spite of surplus is claimed to be highly irresponsible but the Discoms claimed that surplus in calculation did not turn out to be surplus in reality. The calculation of the additional financial burden on the consumers due to the liability for payment of fixed cost at Rs.2102.44 crores is not admitted by the Discoms and the considerations for award of additional surcharge from open access consumers are not relevant considerations for the present consideration. The objectors relied on the Indian Electricity Market

Data Analysis by an enterprise of the Government of India to refute the claim of this power being cheaper but such intraday/contingency market depends on the vagaries of the market conditions and forces and may not offer a safe basis for stable planning. The very strong criticism of the “powers that be” and their ways cannot be the subject of determination herein. The objectors ultimately sought for full data (more data than furnished) and the learned Standing Counsel for the petitioners submitted that any further information cannot and is not being furnished.

47. In his further objections dated 18-08-2017, Sri M. Venugopala Rao claimed that so called apparent common error claimed to have been made inadvertently by the Discoms in the tariff calculations of three projects is irrelevant and the subject common petition is uncommon in the annals of the Commission. While the petitioners have not traced the manner in which such an “error” has crept in. If it were such an error as would materially affect the fixation of merit order dispatch by the Commission, the same may not be lightly brushed away as irrelevant. As rules of procedure are intended to be hand maids of justice, the form of the petition making a common prayer in respect of the three generators in an Interlocutory Application should not lead to any denial of civil or substantive rights, if the parties are otherwise entitled to the same. The learned objector worked out the total tariffs for new IPPs and these three plants at Rs.2.98, Rs.3.47 and Rs.3.60 per unit, which the Discoms do not admit. While the various issues about the GVK buyout, gas supply agreement, CBCID inquiry etc., are not the core issues to be considered herein, similar are the questions relating to high cost NCE, RPPO, the inclusion or exclusion of respondents 1 and 2 in the long term power procurement plan, possible manipulations relating to power exchanges etc.

48. In the submissions of Sri M. Venugopala Rao dated 07-10-2017 again the possibility of paying Rs.620 crores more to the 1st respondent and Rs.675 crores more to the 2nd respondent in comparison to new IPPs was referred to and it was stated that it is desirable to give priority to Vemagiri project which agreed for deletion of the clause for payment of fixed charges for deemed generation, subject to certain conditions. While this suggestion of Sri M. Venugopala Rao regarding Vemagiri project has to receive the attention of the concerned authorities, as already stated, the any excessive tariff being payable to respondents 1 and 2 is not admitted by the Discoms.

49. Sri M. Venugopala Rao in his later submissions dated 21-10-2017, questioned the non-furnishing of information about the basis for anticipation of severe coal supply constraints in the next six months and the Discoms not furnishing the relevant information. He also pointed out that the coal which could have generated the installed capacity of 1514 MW supplied to TS Discoms could have been utilized to generate and supply the said power to AP Discoms as per the existing Power Purchase Agreements after the stoppage of supply of thermal power to TS Discoms. In addition is the bundled power from NTPC and any backing down has to follow the merit order dispatch. The direction of the Commission about procurement of energy only from approved sources is also relied on and the contentions of the parties on these aspects are mutual denials of each other's contentions. There is also no definite information about the increase in generation of hydel power and slump in power demand. He stated in detail the reasons for concluding that purchase of power from respondents 1 and 2 by backing down other power units as per the principles of merit order dispatch would impose avoidable additional burden on the Discoms and the consumers and he calculated the possible placement of

respondents 1 and 2 in merit order. While respondents 1 and 2 obviously did not approach any power exchange, the same may be due to the fluctuating fortunes in any transactions through the power exchanges compared to the stability and continuity of any transactions with the petitioners. The detailed reasons in the submissions dated 21-10-2017 definitely provoke some doubts about the necessity and justifiability of the proposal herein but at the same time, there is also no irrefutable material to totally deny any credit to the claims of the Discoms.

50. Sri M. Venugopala Rao in his further submissions dated 28-10-2017 stated about the generation backing down sequence issued by SLDC with effect from 30-09-2017. The merit order dispatch report of Ministry of Power, Government of India dated 23-10-2017, the energy deviation statement of September, 2017 to the Commission by APPCC etc., to show that transmission charges are not being considered for implementation of the merit order dispatch. PGCIL charges for non-utilization at Rs.0.58 ps per kWh have to be paid and backing down power from NLC will result in an avoidable burden of 0.531 ps per kWh on the consumers. The offer by the Spectrum, 2nd respondent to sell at Rs.3.31 ps per kWh also cannot justify backing down of NLC. He compared the information in the earlier years to indicate that the variable cost of NLC power was not correctly projected and he also relied on the absence of any material to show severe coal supply constraints. He complained against the Discoms not furnishing the information sought by him during the public hearing and as already stated, the Discoms did not furnish any information. The claims of the objectors about the 1st respondent vis-à-vis NLC are denied by the Discoms.

51. In the final submissions dated 03-11-2017, Sri M. Venugopala Rao complained about the way in which the public hearing is conducted and the Commission responded to their requests, but the Commission can only say that it is acting to the best of its ability, knowledge and judgment in conducting the proceedings including the public hearings or responding to the requests of various parties or stakeholders. When the learned Standing Counsel for the Discoms stated about not producing any further information, it was made clear by the Commission that the necessary inferences about non-production of any information will be drawn if any such information is considered to be vital to the issue and available with the Discoms and suppressed from the Commission and it is for the Commission to arrive at any such conclusion and not for a party or a stakeholder to presume helplessness on the part of the Commission. It should be made clear at this stage that in any judicial proceedings (the proceedings before the Commission having been deemed to be judicial proceedings under section 95 of the Electricity Act, 2003), the court/judge actively participates in the hearing and such interventions are with a view to elicit information or to have a question of law or fact clarified or to stimulate a discussion on conceivable alternative courses of action to do justice.

52. In the objections dated 16-06-2017, the observations of the Chairman of the Commission during some other hearing, about the legal sanctity of APPCC and accusing it of executive arrogance were referred to. The observations of the Commission through its Chairman were neither conclusions nor accusations but were queries to elicit the legal sanctity of APPCC and if it has no legal sanctity, whether its actions amount to executive arrogance. Similar is the observation in the objections about the present public hearing being without a precedent but it is humbly sought to be brought to the notice of all concerned that it is only with a view

to ensure more transparency and accountability that matters which were earlier considered and decided purely as administrative matters within the secrecy of the office of the Commission are now brought to the realm of the public hearing whenever public interest is considered by the Commission to be involved and it is only hoped that mere disagreement of the Commission with the views or perceptions of a stakeholder or a party may not be construed as *per se* indicating any lack of *bona fides* on the part of the Commission.

53. Similar observations of the Chairman during the public hearing that no surplus power is available is not an expression of opinion or view that no surplus power is available but to know about the acceptability of the proposed procurement of power vis-à-vis availability or non-availability of surplus power. If the representatives of Engineers' and Assistant Engineers' Associations were asked as to whether they are expected to know the details of realities as part of the organizations, it is because they came up with facts and figures and not with a view to draw any conclusion from their answers. A hope was expressed that the Commission would respond to all the relevant issues and points raised by the objector and it would be the endeavour of the Commission in all matters including the present one to respond to and decide all the relevant issues and points raised in any proceedings before it. It may not be a word to word, line to line reply but in no case, the Commission failed to deal with and answer any questions which it felt relevant to the inquiry before it. The Commission only wishes to place on record that all its actions and orders or expressions are in *bona fide*, honest and neutral belief of their correctness, reasonableness and justification in fact and law and hopefully the credibility of the Commission on that count is not in doubt. The Commission might have gone wrong in its conclusions and its actions but never knowingly or designedly. However, the Commission does

not claim to be infallible and will continue to make every effort to improve itself without giving any scope for repetition of its mistakes, if any.

54. Be that as it may, the objections dated 03-11-2017 about the silence and unresponsiveness of the Commission and its reluctance to exercise its legitimate authority are noted with pain and anguish and any such impressions or insinuations are left to the good sense of the concerned.

55. Learned objector while sticking to the stand that available surplus power excludes any necessity for the proposed procurement, made suggestions in academic interest as desired by the Commission. He suggested that Discoms may be directed to go through power exchanges or competitive bidding when required and if purchase of power from respondents 1 and 2 is permitted, it may be at the fixed charges applicable at the time of expiry of their Power Purchase Agreements working it out at 80% PLF. In other words, there should be no fixed charges for deemed generation and no reworking of fixed charges on actual generation more so when no additional capital expenditure is incurred. The fixed and variable charges of the respondents 1 and 2 should be firm as in the case of purchase of power from power exchange and the purchase should be strictly following the merit order dispatch without any obligation to the Discoms to pay fixed charges or penalties after taking into account the fixed charges and transmission charges to be paid by the Discoms to those projects which will be backing down in order to purchase this power. The suggestions of Sri M. Venugopala Rao and the Engineers' Associations have to be kept in view accordingly.

56. In their application and their responses, the petitioners have clearly stated about an 'accidental' error in the numbers inadvertently made in the tariff calculation

of these three projects in the filing of Aggregate Revenue Requirement by the distribution companies for the financial year 2017-18. The error described as apparent by the petitioners themselves is difficult, if not impossible, to be believed as inadvertent or innocent. In filing such a crucial document like Aggregate Revenue Requirement, a thorough check at every stage should be indispensable and if the error alone led to the Commission not taking these developers into consideration for the merit order dispatch, it is a very serious consequence that fell upon these three generators for no fault of theirs. Therefore irrespective of the result of this Interlocutory Application, the Discoms should be directed to inquire into the circumstances and persons responsible for such an error and take appropriate corrective measures to prevent recurrence of any such situations in future.

57. The petitioners have stated that the power has been availed in these circumstances even after expiry of the Power Purchase Agreements and that the original Power Purchase Agreement with the 1st respondent was entered into on the basis of international competitive bidding process.

58. The detailed response of the petitioners to the various objections in effect and substance attempted to state that the exclusion of these power producers from consideration in the tariff order of 2017-18 was due to an incorrect statement of the tariff payable based on mistaken numbers and that permitting as short term purchases for this financial year would be beneficial to the Discoms and the consumers. Even in the application, the actual cost of these three generators is projected and the second respondent pointed out that the purchases from the exchanges by the AP Discoms from April, 2017 to August, 2017 was for Rs.3.44 to Rs.4.04 ps per unit making an average of Rs.3.67 ps. The Memo by the petitioners

dated 13-10-2017 also projected the same figures and these circumstances may disclose not only the non-availability of estimated power from the approved stations in these months but also the price of power from exchanges being not less than the cost of power now projected by the three generators. In the Memo dated 25-10-2017, the 2nd respondent offered its power with a further concession at Rs.3.31 ps per kWh/unit and in the Memo of the petitioners dated 13-10-2017 it was clearly stated that if the prices are arrived with a PLF of 80% and a fixed price of 0.4776 kWh being the fixed price paid at the time of expiry of the Power Purchase Agreements, then the effective prices will be Rs.3.23 and Rs.3.09 with 55% and 40% PLF respectively for the 2nd and 1st respondents, which more or less tallies with the suggestions made in academic interest by Sri M. Venugopala Rao. However, as the concerned Ministry of Government of India has revised the price of natural gas with effect from 01-10-2017, the increase in gas price is stated to increase the power per unit cost to Rs.3.52 and Rs.3.29 respectively for the 2nd and 1st respondents. While the other reasons relied on by the petitioners to claim that what was offered by the respondents is less than the cost of procurement of power from other generators are not admitted by the objectors / stakeholders, the claims of the petitioners that the cost of power from respondents 1 and 2 or Godavari Gas Power Plant will be less than procurement from other sources in the merit order dispatch even if other generators were to be paid fixed cost will be open to factual and physical verification at the end of the financial year and if it were to be found that the petitioners misled the Commission, the legal consequences under the provisions of the Electricity Act, 2003 should ensue. If procurement of power from respondents 1 and 2 were to be thus cheaper to the petitioners notwithstanding any liabilities towards persons having Power Purchase Agreements with them, the same exfacie is beneficial both to the

distribution companies and the consumers. The cost of power from the Godavari Gas Power Plant is stated to be much less and if appropriate conditions are imposed, the procurement of power for this financial year from these three generators can be permitted accordingly. While leaving open various questions raised outside the scope of the present Interlocutory Application to be determined in appropriate proceedings, this Interlocutory Application has to be ordered on such lines.

59. Therefore,--

- (a) the Applicants/Petitioners shall cause the circumstances and persons responsible for presenting an incorrect picture relating to respondents 1 and 2 and Godavari Gas Power Plant in the Aggregate Revenue Requirement (ARR) of FY 2017-18 duly identified in accordance with the prescribed procedure and take necessary corrective measures to prevent recurrence of any such events in future;
- (b) the Applicants/Petitioners are permitted to procure power from the 1st respondent at a fixed cost of Rs.0.96 ps and variable cost of Rs.2.33 ps making a total of Rs.3.29 ps per unit during the FY 2017-18;
- (c) the Applicants/Petitioners are permitted to procure power from the 2nd respondent at a single part tariff of Rs.3.31 ps per unit during the FY 2017-18.
- (d) the Applicants/Petitioners are permitted to procure power from Godavari Gas Power Plant at a fixed cost of Rs.0.79 ps and a variable cost of Rs.2.20 ps per unit during the FY 2017-18;
- (e) the above short term purchase of power shall be strictly following the principle of merit order dispatch and the Applicants/Petitioners shall not be

liable for any obligations to pay any fixed charges or penalty or otherwise if they do not purchase power from these three plants;

(f) there shall be no payment of fixed charges for deemed generation and no reworking of fixed charges based on actual generation in respect of these short term purchases;

(g) the consideration and conclusions herein are purely confined only to the short term purchases for FY 2017-18 and no other issue or matter;

(h) within two months, on expiry of financial year 2017-18, the Applicants/Petitioners shall place before the Commission material to substantiate that these short term purchases did not impose any additional burden on the distribution companies or the consumers due to any payment to any generators permitted in the merit order dispatch, due to these short term purchases.

60. The Interlocutory Application is ordered accordingly, without costs.

This order is corrected and signed on this the **29th day of November, 2017.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman